

Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into 18 Classes, based on differences in the legal nature or priority of such Claims and Interests (other than Administrative Expense Claims and Priority Tax Claims, which are addressed in Article II of the Plan, and which are required not to be designated as separate Classes pursuant to section 1123(a)(1) of the Bankruptcy Code).

131. The Plan's classification scheme follows the Debtors' capital structure.¹⁵⁸ Secured Claims are classified separately from General Unsecured Claims.¹⁵⁹ The Plan further divides the Debtors' prepetition unsecured debt into separate Classes.¹⁶⁰ Unsecured debt is classified separately for each Debtor, General Unsecured Claims are classified separately from Senior Notes Claims and General Unsecured Claims are classified separately from Equity Interests. In each instance of separate classification, the Plan classifies Claims based upon their different rights and attributes.¹⁶¹

¹⁵⁸ Nystrom Direct ¶ 11.

¹⁵⁹ Nystrom Direct ¶ 11.

¹⁶⁰ Nystrom Direct ¶ 11.

¹⁶¹ Nystrom Direct ¶ 12.

132. Valid business, factual and legal reasons exist for separately classifying the various Claims and Interests under the Plan.¹⁶² Additionally, each of the Claims or Interests in each particular Class is substantially similar to the other Claims or Interests in such Class.¹⁶³
133. The Debtors classified the Senior Notes arising under the Senior Notes Indenture and the Subordinated Notes arising under the Subordinated Notes Indenture (“Subordinated Notes”) separately because they are not “substantially similar” claims.¹⁶⁴ Specifically, pursuant to Section 10.02 of the Subordinated Notes Indenture, upon a chapter 11 filing of Hawaiian Telecom, the holders of the Senior Notes Claims (Class 5) are entitled to receive payment in full in cash before the holders of the Subordinated Notes Claims (Class 6) are entitled to receive or retain payment or distribution of any kind or character.¹⁶⁵
134. Moreover, Senior Notes Claims (Class 5) and General Unsecured Claims (Classes 7-14) are not substantially similar Claims.¹⁶⁶ General Unsecured

¹⁶² Nystrom Direct ¶ 12.

¹⁶³ Nystrom Direct ¶ 12.

¹⁶⁴ Nystrom Direct ¶ 13.

¹⁶⁵ Nystrom Direct ¶ 13.

¹⁶⁶ Nystrom Direct ¶ 14.

Claims are not subordinated to payment in full of the Senior Notes Claims.¹⁶⁷

135. The classifications were not done for any improper purpose, and the creation of such Classes does not unfairly discriminate between or among Holders of Claims or Interests.¹⁶⁸ Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.¹⁶⁹

2. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)).

136. Article III of the Plan specifies that Claims and Equity Interests in Classes 1, 2, 4, 15 and 16 are Unimpaired. Additionally, Article II of the Plan specifies that Administrative Expense Claims and Priority Tax Claims are Unimpaired, although these Claims are not classified under the Plan.

3. Specified Impaired Classes (11 U.S.C. § 1123(a)(3)).

137. Article III of the Plan specifies the treatment of each Impaired Class under the Plan, including Classes 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17 and 18.

4. No Discrimination (11 U.S.C. § 1123(a)(4)).

¹⁶⁷ Nystrom Direct ¶ 14.

¹⁶⁸ Nystrom Direct ¶ 45.

¹⁶⁹ Nystrom Direct ¶ 9.

138. Article III of the Plan provides the same treatment for each Claim or Equity Interest within a particular Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment with respect to such Claim or Equity Interest.

5. Implementation Of The Plan (11 U.S.C. § 1123(a)(5)).

139. On October 26, 2009, the Debtors filed the Plan Supplement. On October 28, 2009, November 9, 2009, and December 28, 2009, the Debtors filed certain amendments to the Plan Supplement. The Plan Supplement complies with the terms of the Plan, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order, and no other or further notice is or shall be required. The Debtors are authorized to modify the Plan Supplement following entry of the Confirmation Order in accordance with the terms of the Plan.
140. The Plan Supplement provides adequate and proper means for the Plan's implementation, including, without limitation: (a) the continued corporate existence of the Debtors; (b) the consummation of the Restructuring Transactions; (c) generally allowing for all corporate action necessary to effectuate the Plan, including the assumption of agreements with existing management, appointment of the directors and officers of the Reorganized

Debtors, the distribution of the New Common Stock and issuance of any securities required to be issued pursuant to the Plan; (d) the adoption and filing of the Certificates of Incorporation and the By-Laws; (e) cancellation of existing securities and agreements and surrender of existing securities; (f) identification of sources of consideration from which the Debtors will make distributions under the Plan; (g) assumption of the collective bargaining agreement with the IBEW, Local 1357, dated September 13, 2008; (h) the effectuation of the New Term Loan; (i) the effectuation of the Warrant Agreement; (j) the effectuation of the Litigation Trust Agreement; (k) the effectuation and consummation of the Rights Offering; and (l) preservation of certain of the Debtors' Causes of Action.

141. The Secured Parties did not object to the Plan or any of the Plan Supplement documents. The Secured Lenders filed a "reservation of rights" to the Plan Supplement on November 6, 2009, but subsequently released their reservation of rights and agreed on the record that the matter was submitted.¹⁷⁰ At that time, the Court stated that the Plan will be confirmed, subject to the Court's receipt of proposed findings of fact and conclusions of

¹⁷⁰ November 13, 2009 Tr. at 225:16-226:1 (counsel for the parties).

law consistent with the evidence adduced and the arguments made at the confirmation trial.¹⁷¹

6. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).

142. Section 4.07 of the New Certificate of Incorporation for Hawaiian Telcom Holdco, Inc., attached as Exhibit B to the Plan Supplement, prohibits the issuance of non-voting equity securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code.

7. Designation Of Directors And Officers (11 U.S.C. § 1123(a)(7)).

143. Article V.K of the Plan identifies the directors and officers of the Reorganized Debtors to the extent known and, together with the representations made by the Debtors prior to and at the confirmation trial, adequately describes the manner of selection of the remaining directors and officers to be appointed.
144. Hawaiian Telcom Holdco, Inc.'s officers immediately prior to the Effective Date shall serve as the initial officers of Reorganized Hawaiian Telcom on and after the Effective Date. In addition, Article V.K states that Hawaiian Telcom's current President and Chief Executive Officer, Eric K. Yeaman will be appointed to the board of directors of Reorganized Hawaiian Telcom.

¹⁷¹ November 13, 2009 Tr. at 228:11-18 (statement by the Court).

145. The Senior Secured Agent, as the representative for the Secured Lenders, has engaged Spencer Stuart, a world renowned provider of senior-level executive search and leadership consulting services, to assist the Debtors in selecting additional members of the board of directors for Reorganized Hawaiian Telcom.¹⁷² The manner of selecting the officers and directors of Reorganized Hawaiian Telcom is consistent with Hawaii corporate law, the Bankruptcy Code, the interests of creditors and equity security holders and public policy.¹⁷³ Therefore, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

8. Discretionary Contents Of The Plan (11 U.S.C. § 1123(b)).

146. The other provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

**(a) The Plan's Release, Injunction And
Exculpation Provisions Are Appropriate.**

147. The releases by the Debtors are limited solely to Claims or Causes of Action that belong to the Debtors. The releases are consensual and only those parties who choose to execute and deliver releases to the Debtors pursuant to Article XI.B.2 of the Plan will be bound by the release provision. The

¹⁷² Reich Direct ¶ 41.

¹⁷³ Nystrom Direct ¶ 29.

Debtors' release of Claims and Causes of Action is a component of the consensual Plan process.¹⁷⁴

148. The Debtors' releases were not challenged by any party in the proceeding. The U.S. Trustee challenged the injunction and exculpation provisions, but that dispute was settled during the confirmation trial. As amended, the injunction and exculpation provisions were not contested by any party.

149. The Plan's injunction is necessary to effectuate the Plan Releases and to protect the Reorganized Debtors from any potential litigation from prepetition creditors as they implement the provisions of the Plan after the Effective Date. Any such litigation would hinder the efforts of the Reorganized Debtors to effectively fulfill their responsibilities as contemplated in the Plan and thereby maximize value for all holders of Claims and Interests.¹⁷⁵

150. The scope of the exculpation provision contained in Article X.C of the Plan is appropriately limited to the Exculpated Parties' participation in these chapter 11 cases, has no effect on liability that results from gross negligence

¹⁷⁴ Nystrom Direct ¶ 69.

¹⁷⁵ Nystrom Direct ¶ 70.

or willful misconduct, and does not apply to any acts or omissions expressly set forth in and preserved by the Plan.¹⁷⁶

151. The Plan would not have materialized if the negotiating parties had not known they would be protected from liability, other than for willful misconduct or gross negligence, in connection therewith.¹⁷⁷

(b) Section 1145 Waiver (11 U.S.C. § 1145).

152. The Plan provides that the offering, issuance, and distribution of the New Common Stock, the New Warrants and the New Common Stock deliverable upon exercise of the New Warrants, and any subsequent sales, resales or transfers, or other distributions of any such securities, are exempt from any federal or state securities laws registration requirements to the fullest extent permitted by section 1145 of the Bankruptcy Code.
153. The Plan meets all three of the requirements for section 1145 of the Bankruptcy Code: (a) the securities are being offered pursuant to the Plan; (b) the recipients of any securities pursuant to the Plan (i.e., the Secured Parties and the Senior Noteholders) hold a claim against the Debtors; and (c) the recipients of the securities are receiving the securities in exchange for their Claims against the Debtors.

¹⁷⁶ Nystrom Direct ¶ 71.

¹⁷⁷ Nystrom Direct ¶ 71, November 9, 2009 Tr. at 105:6-9 (Nystrom testimony).

C. The Debtors Are Proper Debtors (11 U.S.C. § 1129(a)(2)).

154. The Debtors: (a) are proper debtors under section 109 of the Bankruptcy Code; (b) have complied with all applicable provisions of the Bankruptcy Code except as otherwise provided or permitted by order of the Bankruptcy Court; and (c) have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the Disclosure Statement Order in transmitting the Solicitation Materials and in tabulating the votes with respect to the Plan.

**D. The Debtors Proposed The Plan
In Good Faith (11 U.S.C. § 1129(a)(3)).**

155. The Debtors proposed the Plan in good faith, with the legitimate and honest purpose of reorganizing Hawaiian Telcom's ongoing business while maximizing the value of each of the Debtors and the recovery to creditors and other stakeholders.
156. The negotiations that culminated in the Plan, as well as the Plan itself, provide further evidence of the Debtors' good faith, as the Plan assures the fair treatment of Holders of Claims and Interests.¹⁷⁸
157. The Plan is the product of arm's length negotiations between, among other entities, the Debtors and the Secured Parties.¹⁷⁹ The negotiations were time

¹⁷⁸ Nystrom Direct ¶ 45; see also section I.A-E *supra*.

consuming, but resulted in a plan that accomplishes the goals Hawaiian Telcom laid out at the outset of these cases.¹⁸⁰ The negotiations led to a distribution of value according to the Secured Parties' liens and the value of the unencumbered assets.¹⁸¹

158. Consistent with the overriding purpose of chapter 11, these chapter 11 cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to reorganize and emerge from bankruptcy with a capital structure that will allow them to satisfy their obligations with sufficient liquidity and capital resources.¹⁸²

159. In addition to the extensive negotiations with the Secured Parties, the Debtors' management team maintained open dialogues with other key constituents.¹⁸³ The Debtors worked with the State of Hawaii to keep the HPUC informed about the restructuring process.¹⁸⁴ Further, the Debtors maintained an open dialogue with the Committee.¹⁸⁵

179 Nystrom Direct ¶ 24.

180 Nystrom Direct ¶ 24.

181 Nystrom Direct ¶ 25.

182 Nystrom Direct ¶ 25; Yeaman Direct ¶¶ 4-5

183 Reich Direct ¶ 25; Yeaman Direct ¶¶ 5-6.

184 Reich Direct ¶ 25.

185 Reich Direct ¶ 25.

160. The Debtors also worked diligently to bridge the gap between the Committee and the Secured Parties.¹⁸⁶ Among other things, the Debtors participated actively in the October 26-29, 2009 mediation in this matter and other continuing settlement discussions.¹⁸⁷

161. No one has introduced any evidence that would suggest that the Plan was not proposed in good faith.

**E. Payment For Services Or
Costs And Expenses (11 U.S.C. § 1129(a)(4)).**

162. Pursuant to Article II of the Plan, all payments made or to be made by the Debtors for services or for costs and expenses in or in connection with the chapter 11 cases, or in connection with the Plan and incident to the chapter 11 cases, have been approved by, or are subject to the approval of, the Bankruptcy Court as reasonable.

F. Directors, Officers And Insiders (11 U.S.C. § 1129(a)(5)).

163. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtors have been fully disclosed to the extent known.¹⁸⁸ Hawaiian Telcom Holdco, Inc.'s officers immediately prior to the Effective Date shall serve as the initial officers of

¹⁸⁶ Yeaman Direct ¶ 6.

¹⁸⁷ Yeaman Direct ¶ 6.

¹⁸⁸ November 13, 2009 Tr. at 134:8-135:2 (statement by Debtors' counsel).

Reorganized Hawaiian Telcom on and after the Effective Date.¹⁸⁹ The Debtors have already disclosed the compensation they will receive.¹⁹⁰ In addition, Article V.K states that Hawaiian Telcom's current President and Chief Executive Officer, Eric K. Yeaman will be appointed to the board of directors of Reorganized Hawaiian Telcom.¹⁹¹

164. As noted in paragraph 145, above, the Senior Secured Agent, as the representative for the Secured Lenders, has engaged Spencer Stuart, a world renowned provider of senior-level executive search and leadership consulting services, to assist the Debtors in selecting additional members of the board of directors for Reorganized Hawaiian Telcom.¹⁹² The Debtors will file a notice identifying any additional members to be appointed to the board of directors.

165. The manner of appointment or continuance of the proposed directors and officers is consistent with Hawaii corporate law, the Bankruptcy Code, the interests of creditors and equity security holders and with public policy.¹⁹³

189 Ex. D-1 at 35 (Plan); Ex. D-3 at 123-223 (Plan Supplement).

190 Ex. D-1 at 36 (Plan); see also ex. D-3 at 65-89, 119-121 (Plan Supplement).

191 Nystrom Direct ¶ 28.

192 Nystrom Direct ¶ 28.

193 Nystrom Direct ¶ 29.

The directors and officers of Reorganized Hawaiian Telcom who have been identified to date and the process by which the remaining directors and officers will be selected will insure that: (a) Reorganized Hawaii Telcom's directors and officers will have relevant and solid experience in Reorganized Hawaiian Telcom's business and industry and experience in financial and management matters; (b) their appointment does not perpetuate incompetence, lack of discretion, inexperience, or affiliations with groups inimical to the best interests of the debtor; and (c) the control of Reorganized Hawaiian Telcom by the proposed individuals will be beneficial.¹⁹⁴ The proposed directors and officers are competent and will give Reorganized Hawaiian Telcom both continuity and fresh insights into running the business.¹⁹⁵

G. No Rate Changes (11 U.S.C. § 1129(a)(6)).

166. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission.

H. Best Interests Of Creditors (11 U.S.C. § 1129(a)(7)).

167. Each Holder of an Impaired Claim or Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or

¹⁹⁴ Nystrom Direct ¶ 29.

¹⁹⁵ Nystrom Direct ¶ 29.

Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

168. Holder of Claims in Classes 3, 7, 8, 9, 10, 11, 12, 13 and 14 are Impaired and have voted to accept the Plan.¹⁹⁶ Classes 15-18 are also Impaired and were deemed to reject the Plan.
169. Class 5 is Impaired and voted against the Plan.¹⁹⁷
170. As set forth in the Disclosure Statement, Zolfo Cooper prepared a liquidation analysis reflecting the expected recoveries in a hypothetical chapter 7 liquidation as well as an estimate of the differences in claims and expenses associated with a liquidation under chapter 7 of the Bankruptcy Code.¹⁹⁸ Zolfo Cooper relied on members of Hawaiian Telcom as well as Lazard in developing the liquidation analysis.¹⁹⁹

¹⁹⁶ McGuire Direct ¶ 12.

¹⁹⁷ Sullivan Direct ¶ 8, Ex. A.

Docket No. 1406 Written Supplemental Direct Testimony of Jane Sullivan, Financial Balloting Group LLC (“Sullivan Direct”) ¶ 8, Ex. A attached thereto. Ms. Sullivan is Executive Director of Financial Balloting Group LLC (“FBG”). Ms. Sullivan, managed FBG’s efforts to serve the Solicitation Packages on the holders of claims in Class 5 consistent with the Solicitation Order. Id. ¶ 1. Ms. Sullivan further managed the tabulation of voting results for the Class 5 Senior Noteholders. Sullivan Direct ¶ 2.

¹⁹⁸ Nystrom Direct ¶ 33.

¹⁹⁹ Nystrom Direct ¶ 33.

171. In preparing the liquidation analysis, Hawaiian Telcom assumed there would be a forced going-concern sale of Hawaiian Telcom, instead of a piece-by-piece liquidation of Hawaiian Telcom's assets because liquidation and wind down is not a possibility for Hawaiian Telcom.²⁰⁰ Because the hypothetical chapter 7 liquidation would be pursuant to a forced going-concern sale, Zolfo Cooper applied a discount range from 15% to 30% off the midpoint of the enterprise value plus non-core assets.²⁰¹
172. As shown in the liquidation analysis, holders of Class 5 Senior Notes Claims will recover as much or more value as a result of confirmation of the Plan than through a hypothetical chapter 7 liquidation.²⁰² The Senior Noteholders, the only class that voted against the Plan, will receive approximately 2.1% recovery under the Plan instead of 0-0.9% recovery under a chapter 7 liquidation.²⁰³
173. Classes 15-18 will also receive more under the Plan than they would in a chapter 7 liquidation.²⁰⁴

200 Nystrom Direct ¶ 35.

201 Nystrom Direct ¶ 33.

202 Nystrom Direct ¶ 38.

203 Nystrom Direct ¶ 38, Sullivan Direct ¶ 12, McGuire Direct ¶ 8.

204 Nystrom Direct ¶ 32.

174. No party contested the best interests of creditors standard and there is no evidence that Hawaiian Telcom's liquidation analysis is not reasonable or appropriate.

I. Acceptance By Certain Classes (11 U.S.C. § 1129(a)(8)).

175. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. Classes 1, 2, 4 and 15 are Unimpaired Classes of Claims and Class 16 is a Class of Unimpaired Intercompany Interests, each of which is conclusively deemed to have accepted the Plan in accordance with section 1126(f) of the Bankruptcy Code. Classes 3, 7, 8, 9, 10, 11, 12, 13 and 14, are Impaired Classes and have voted to accept the Plan.²⁰⁵

176. Class 5, an Impaired Class, has voted to reject the Plan.²⁰⁶ Classes 6, 17 and 18 are not receiving any distributions under the Plan and are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

177. The Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code.

J. Treatment Of Claims Entitled To Priority Pursuant To Section 507(a) Of The Bankruptcy Code (11 U.S.C. § 1129(a)(9)).

²⁰⁵ McGuire Direct ¶ 12.

²⁰⁶ Sullivan Direct ¶ 8.

178. The treatment of Administrative Claims and Priority Tax Claims as set forth in Article II of the Plan is in accordance with the requirements of section 1129(a)(9) of the Bankruptcy Code.

K. Acceptance By At Least One Impaired Class (11 U.S.C. § 1129(a)(10)).

179. As set forth in the Voting Report, Classes 3, 7, 8, 9, 10, 11, 12, 13 and 14, all of which are impaired, voted to accept the Plan.²⁰⁷

L. The Plan Is Feasible (11 U.S.C. § 1129(a)(11)).

180. The information in the Disclosure Statement and the evidence proffered or adduced at or prior to the confirmation trial and in the Supporting Declarations: (a) is persuasive and credible, (b) has not been controverted by other evidence and (c) establishes that the Plan is feasible and confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of Reorganized Hawaiian Telcom.

181. The Debtors sought chapter 11 protection primarily because their large debt service obligations limited their ability to respond to the changing competitive landscape.²⁰⁸ As such, the Plan substantially reduces leverage and debt service and allows Reorganized Hawaiian Telcom to pursue the

²⁰⁷ McGuire Direct ¶ 12.

²⁰⁸ Reich Direct ¶ 58.

strategic initiatives already underway, invest in new products and services and improve operational results.²⁰⁹

182. Hawaiian Telcom's business projections, strategic plan and initiatives going forward are evidence that confirmation of a plan of reorganization is not likely to be followed by the liquidation of Reorganized Hawaiian Telcom, or the need for further financial reorganization.²¹⁰ The Debtors' financial projections – which show positive net income starting in 2011 – and their projected debt service obligations – which are greatly reduced from prepetition levels – demonstrate the Debtors' ability to meet their obligations under the Plan.²¹¹
183. Hawaiian Telcom thoroughly analyzed its ability to meet its obligations under the Plan.²¹² Once the Plan becomes effective, Hawaiian Telcom's debt obligations will be reduced by approximately \$790 million.²¹³

209 Reich Direct ¶ 58.

210 Reich Direct ¶ 59.

211 Reich Direct ¶ 59.

212 Reich Direct ¶ 59.

213 Reich Direct ¶¶ 58-59.

184. Based on the projections, the Debtors' revised strategic business plan and a significantly deleveraged capital structure, the Debtors will be well-positioned to compete in their industry going forward.²¹⁴

185. No party contested the feasibility of the Plan and Hawaiian Telcom's evidence stands un rebutted and unchallenged.²¹⁵

M. Payment Of Bankruptcy Fees (11 U.S.C. § 1129(a)(12)).

186. Article XIV.H of the Plan provides for the payment of all fees payable by the Debtors under 28 U.S.C. § 1930(a).

N. Retiree Benefits (11 U.S.C. § 1129(a)(13)).

187. Article V.N of the Plan provides that on or after the Effective Date of the Plan, the payment of all retiree benefits, as defined in section 1114 of the Bankruptcy Code, will continue in accordance with applicable law.²¹⁶

O. Non-Applicability Of Certain Sections (11 U.S.C. §§ 1129(a)(14), (15) and (16)).

188. The Debtors do not owe any domestic support obligations, are not individuals and are not nonprofit corporations. Therefore, sections 1129(a)(14), 1129(a)(15) and 1129(a)(16) of the Bankruptcy Code do not apply to these chapter 11 cases.

²¹⁴ Reich Direct ¶¶ 58-59.

²¹⁵ November 13, 2009 Tr. at 208:1-7 (statement of Committee's counsel).

²¹⁶ November 9, 2009 Tr. at 86:22-25 (Nystrom testimony).

**P. The Debtors Complied With
Section 1129(b) of the Bankruptcy Code.**

189. Hawaiian Telcom has satisfied the “cram down” requirements of sections 1129(b)(1) and (b)(2) with respect to the Impaired Classes that did not vote to accept the Plan. The Plan is “fair and equitable” and does not discriminate unfairly against any impaired class of claims or equity interests.

1. The Plan Is “Fair and Equitable.”

190. The Plan’s waterfall structure is premised on the satisfaction of the absolute priority rule. Specifically, with respect to each objecting Class, no junior Class is receiving a distribution under the Plan unless the claimants in the higher priority objecting Class receive the full value of their claims.²¹⁷ In addition, no Class senior to any objecting Class will receive, under the Plan, an amount equal to more than the aggregate amount of its constituents’ allowed claims.

191. The Plan’s treatment of claims is proper because the Plan distributes value to the Senior Noteholders and other unsecured creditors in an amount greater, in the aggregate, than the value of the unencumbered assets.²¹⁸

2. There Is No Unfair Discrimination Under The Plan.

²¹⁷ Nystrom Direct ¶ 45.

²¹⁸ Nystrom Direct ¶ 46.

192. Based on the Debtors' own valuation of their encumbered and unencumbered assets, it is clear that the claims and the legal rights of: (a) the Secured Parties, (b) the Senior Noteholders, and (c) the general unsecured creditors are clearly different.²¹⁹ The Plan's classifications and allocation of value between these different classes is based on this independent valuation. There is no unfair discrimination between these classes.²²⁰

193. Hawaiian Telcom considered, among other factors, that the Senior Noteholders typically are institutional investors.²²¹ Given the relatively large claims of the Senior Noteholders, the Debtors determined that they could distribute warrants with significant value to the Senior Noteholders.²²² The typical claimants in the General Unsecured Claim Classes, however, are neither institutional investors nor holders of large claims (in comparison to Senior Noteholders), and thus, it would be administratively inconvenient to distribute to them what would amount to de

²¹⁹ Nystrom Direct ¶ 46.

²²⁰ Nystrom Direct ¶ 46.

²²¹ Nystrom Direct ¶ 14.

²²² Nystrom Direct ¶ 14.

minimis amounts of warrants.²²³ Moreover, given Reorganized Hawaiian Telcom's liquidity needs post-emergence, it is not feasible and would be damaging to the Debtors to provide cash distributions to the Senior Noteholders in the amount that they seek.²²⁴

194. Moreover as discussed above, issuing warrants to the Senior Noteholders rather than common stock will save Hawaiian Telcom between \$13 and \$31 million in tax costs.²²⁵

Q. Only One Plan (11 U.S.C. § 1129(c)).

195. Other than the Plan (including previous versions thereof), no other plan has been filed for the Debtors in the chapter 11 cases.

R. Principal Purpose Of The Plan (11 U.S.C. § 1129(d)).

196. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act, 15 U.S.C. § 77e.

**S. The Debtors' Plan Complies
With Section 1127 Of The Bankruptcy Code.**

197. The Debtors have made certain non-material modifications to the Plan (the "Plan Modifications"), which are reflected in the version of the Plan

²²³ Nystrom Direct ¶ 14.

²²⁴ Nystrom Direct ¶ 15.

²²⁵ Tucker Direct, ¶¶ 26, 28.

attached hereto. None of the modifications made since the commencement of solicitation adversely affects the treatment of any Claim or Equity Interest under the Plan. Prior notice regarding the substance of the modifications, together with the filing with the Court of the Plan as modified by the Plan Modifications and the disclosure of the Plan Modifications on the record at the Confirmation Hearing, constitute due and sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, none of these modifications require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code (especially in light of previously provided disclosures), nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified and attached hereto shall constitute the Plan submitted for confirmation by the Court. All documents necessary to implement the Plan, including, without limitation, those contained in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms' length and shall, upon completion of documentation and execution, be valid, binding and enforceable agreements and not be in conflict with any federal or state law.

198. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. No Holder of a Claim or Equity Interest shall be permitted to change its vote as a consequence of the Plan Modifications.
199. The requirements of section 1127 of the Bankruptcy Code have been satisfied.

**T. The Debtors' Plan Complies
With Section 1125 Of The Bankruptcy Code.**

200. On August 28, 2009, the Bankruptcy Court entered the Disclosure Statement Order [Docket No. 1131], which, among other things: (a) approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017; (b) fixed August 14, 2009 as the Voting Record Date; (c) fixed October 7, 2009 at 9:30 a.m. Hawaii Standard Time as the date and time for commencement of the confirmation trial; (d) fixed September 30, 2009 at 1:00 p.m. Hawaii Standard Time as the deadline for objecting to the Plan; (e) fixed the date by which the Solicitation Package (as defined in the Disclosure Statement Order) must be distributed to holders of Claims entitled to vote to accept or reject the Plan as within five business days of entry of the Disclosure